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09/996,506	11/28/2001	Robert E. Johnson	JOH26 P-300	3065

277 7590 11/18/2003

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EXAMINER

FITZGERALD, JOHN P

ART UNIT	PAPER NUMBER
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3637

DATE MAILED: 11/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/996,506

Applicant(s)

JOHNSON, ROBERT E.

Examiner

John P Fitzgerald

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-9,11,12,14-22 and 28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-9,11,12,14-22 and 28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. In view of applicant's amendment filed 15 August 2003, objections to the drawings are withdrawn. Cancellation of claims 4, 10, 13 and 23-27 is acknowledged.

Claim Rejections - 35 USC § 102

2. Claims 1, 2 and 5-8 are rejected under 35 U.S.C. § 102(b) as being anticipated by Haines. Haines discloses a covered apparatus (10) (Figs. 1-3) having a body supporting member (20) defining a seating area; a hood (11-15) operably supported over the seating area "for" movement between a hiding position where the hood is located over and hides the seating area and an open position where the hood is moved to uncover the seating area; and a link-and-bias mechanism (19, 22) (note: bias source is weight of the hood) operably connected to the hood to automatically move the hood toward the open position when a person removes their weight from the body-supporting member; and a latch (22) on the framework operably connected to the link-and-bias mechanism, the latch being movable between a latched position where the latch secures the body-supporting member in a secured position against a force of the link-and bias mechanism until a the person places a portion of the person's body weight on the body-supporting member and being configured to automatically move to a released position when the person places a portion of their body weight on the body-supporting member (Haines: col. 2, lines 62-68); wherein the body-supporting member comprises a seat (S) configured and adapted to support a person's body weight; framework (18) operably supporting the body-supporting member and the

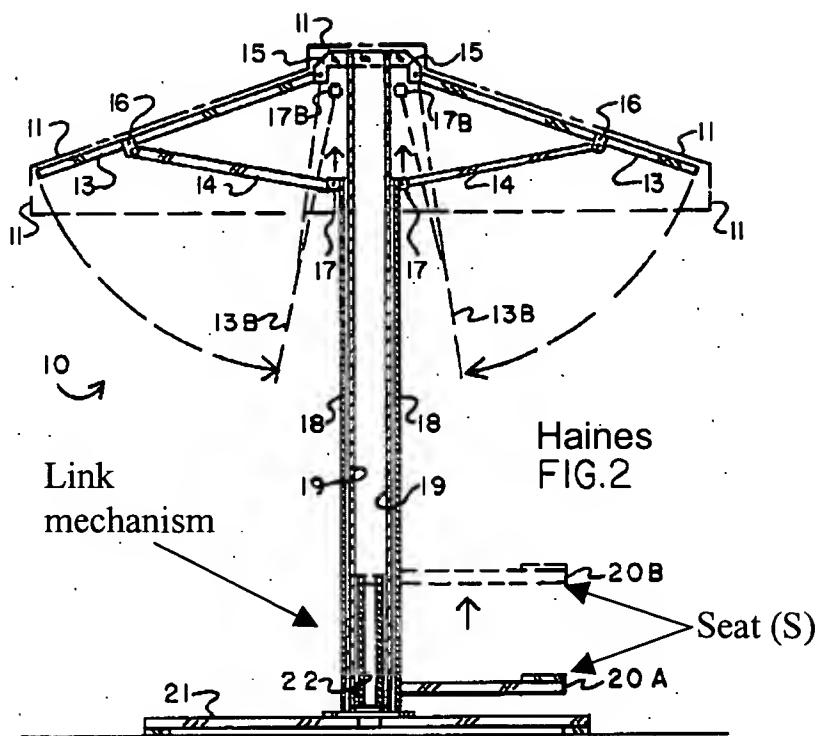
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hood; a base (21) supporting the framework, the base including radially extending legs (Haines: col. 2, lines 15-19) configured to stably support the body-supporting member and hood in a freestanding manner; and wherein the link-and-bias mechanism includes a link mechanism (22) connecting the body-supporting member to the hood; wherein the framework includes tubular members defining an internal cavity and wherein the link mechanism includes a movable component (22) located within the cavity of the framework. Note: Functional recitation(s) using the words “for” have been given little patentable weight because they fail to add any structural limitations and thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) (“The manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself.”); In re Otto, 136 USPQ 458, 459 (CCPA 1963). When interpreting functional language, if the prior art is capable of performing the claimed function—even if not directly disclosed—it anticipates. In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997). See also MPEP § 2114, 2115.

3. Claim 28 is rejected under 35 U.S.C. § 102(b) as being anticipated by Haines. Haines discloses a covered apparatus (10) (Figs. 1-3) comprising: a seat (20) defining a seating area and movable between a first position and a second position; a hood (11-15) operably supported over the seating area for movement between a hiding position where the hood is located over and hides the seating area; and a link-and-bias mechanism (19, 22) operably connecting the seat to the hood so that the first position of the seat corresponds to the hiding position of the hood, and

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so that the second position of the seat corresponds to the open position of the hood, the link-and-bias mechanism providing a biasing force to automatically move the hood toward the open position when a hunter removes his weight from the seat (Hanies: col. 2, lines 62-68); and a releasable latch (22) configured to secure the seat in the first position against the biasing force of the link-and-bias mechanism even when the hunter is not placing a portion of his weight on the seat. Note: Functional recitation(s) using the words “for” have been given little patentable weight because they fail to add any structural limitations and thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) (“The manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself.”); In re Otto, 136 USPQ 458, 459 (CCPA 1963). When interpreting functional language, if the prior art is capable of performing the claimed function-even if not directly disclosed-it anticipates. In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997). See also MPEP § 2114, 2115.



Claim Rejections - 35 USC § 103

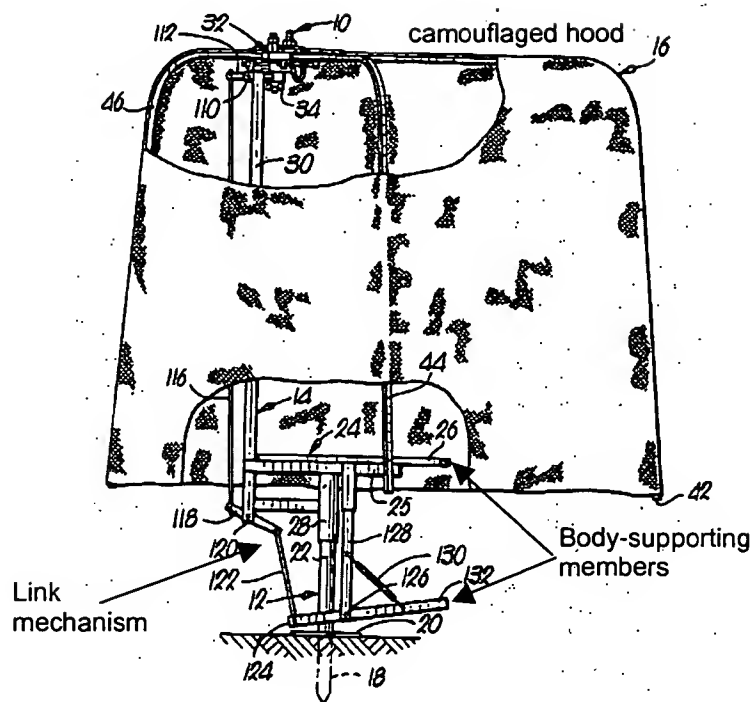
4. Claims 1-3, 6, 7, 11, 12 and 14-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig. US 3,902,264 to Radig discloses a covered apparatus (Figs. 1-5) having two body-supporting members (26, 132), one of which is a seat (26) "adapted to" support a person's body weight and defining a seating area; a hood (16) including a flexible covering that is camouflaged and made of a material suited for outdoor use (US 3,902,264 to Radig: col. 3, lines 32-34); the hood operably supported over the seating area "for" movement between a hiding position where the hood is located over and hides the seating area and an open position where the hood is moved to uncover the seating area (Fig. 3); and a link-and-bias mechanism operably connected to the hood to automatically move the hood toward the open position when a hunter applies his weight to the body-supporting member (132); a framework of

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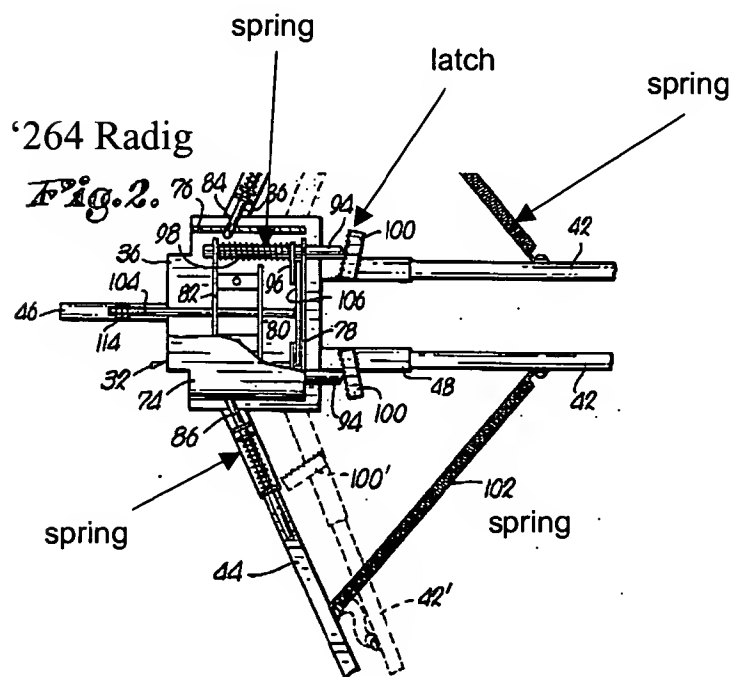
tubular members (12, 14) operably supporting the body-supporting members and the hood; a base (18, 20) supporting the framework to stably support the body-supporting member and hood in a freestanding manner; wherein the link-and-bias mechanism includes a link mechanism (116, 118, 122) connected to the rear of the seat and connecting the body supporting member (132) to the hood; and including a spring attached to the hood (102) and biasing the hood toward the uncovered position; a movable latch (94, 100) on the framework operably connected and engaged the link mechanism via links (82, 104) to the body-supporting member (132), the latch held in position until a person rests their body weight on the body-supporting member, in which the latch is in a secured position against a force of the link-and-bias mechanism, until a person places a portion of the person's body weight on the body-supporting member, at which time the latch is released automatically; the latch holding the hood against a force of springs that "can be" selectively used individually or in combination with each other (90, 98, 130) and being operably connected to the body-supporting member; and the base, hood and body-supporting member being configured to fold into a compact portable package for easy carriage (Fig. 3) (US 3,902,264 to Radig: col. 1, lines 55-65). Although US 3,902,264 to Radig does not expressly disclose that the hood moves toward the open position when a hunter removes his weight from the seat body supporting member, however, US 3,902,264 to Radig expressly discloses that the weight activated body-supporting member (132), which moves the hood toward the open position when a hunter applies his weight to the body-supporting member (132). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the weight activated mechanism to the body-supporting member (26) such that it operably moves the hood toward the open position when a hunter removes his weight from the body-supporting

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member. Additionally, it is considered old and well known to one skilled in the art to employ various automatic mechanisms and latches operably connected to hoods via link-and-bias mechanism to move them between open and closed positions due to application of weights and pressures by a user, as well as to lock and hold the hoods in the open or closed positions. Lastly, in specific regards to claim 14, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an elastic cord since the examiner takes Official Notice of the equivalence of a spring and an elastic cord for their use in the art and the selection of any of these known equivalents to provide an elastic retracting force would be within the level of ordinary skill in the art. Note: Functional recitation(s) using the words “for” have been given little patentable weight because they fail to add any structural limitations and thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) (“The manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself.”); In re Otto, 136 USPQ 458, 459 (CCPA 1963). When interpreting functional language, if the prior art is capable of performing the claimed function-even if not directly disclosed-it anticipates. In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997). See also MPEP § 2114, 2115.



'264 Radig
Fig. 1



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5. Claims 5 and 17 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig as applied to claims 1, 4 and 16 above, and further in view of Kanter et al. and Seaman, Jr. US 3,902,264 to Radig discloses a covered apparatus having all of the elements stated previously. US 3,902,264 to Radig does not expressly disclose a covered apparatus wherein the base includes a plurality of horizontally-oriented radially-extending tubes as legs and includes a plurality of elongated rods shaped to telescope into the tubes, the rods each having an outer end configured to stably engage a ground surface when the rods are telescoped into the tubes, and having an inner end with a retainer thereon shaped to retain the rods to the tubes when the rods are telescoped out of the tubes but further permitting the rods to pivot to a vertical position against the base for compact storage. Kanter et al. teach a covered apparatus (Figs. 1-6) wherein the base includes a plurality of horizontally-oriented radially-extending tubes (68) as legs and includes a plurality of elongated rods (66) shaped to telescope into the tubes, the tubes having an inner end with a retainer (62) thereon permitting the rods to pivot to a vertical position against the base for compact storage. Kanter et al. further teach a retaining means (48, 56) mounted on a base tube to retain telescoping members in a fixed relationship. Seaman, Jr. teaches a base (11) (Figs. 1-3) having a plurality of telescoping legs with outer ends (19) configured to stably engage a ground surface when the rods are telescoped into the tubes and a retainer (21) thereon shaped to retain the rods in the tubes when the rods are telescoped out of the tubes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ the base elements taught by Kanter et al. and Seaman, Jr., modifying the base disclosed by US 3,902,264 to Radig, thus increasing the stability and wind resistance of the covered apparatus (Kanter et al. col. 1, lines 58-60).

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6. Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Haines as applied to claims 1, 2 and 5-8 under 35 U.S.C. § 102(b) above, and further in view of Dubinsky. Haines discloses a covered apparatus having all of the elements stated previously. Haines further discloses that the link-and-bias mechanism is located both inside and outside of the internal cavity (i.e. bias due to weight of various members). Haines does not expressly disclose a covered apparatus wherein the link mechanism includes a cable with a first end extending out of the internal cavity and operably connected to the body-supporting member, and with a second end extending out of the internal cavity and operably connected to the hood. Dubinsky teaches a covered apparatus (Figs. 1-3) having a link mechanism (18, 36, 38) including a cable within the hollow internal cavity of the framework (20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a link mechanism including a cable within the framework, as taught by Dubinsky, modifying the covered apparatus disclosed by Haines, resulting in a covered apparatus requiring minimum operating force to open (Dubinsky: col. 1, lines 63-65). Furthermore, it is considered well within the capabilities of one skilled in the art to route cables or portions of a link mechanism within the framework of a covered apparatus, or partially within the framework and/or partially outside the framework, if so desired, or by design choice.

7. Claims 18-20 are rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig and Dubinsky. US 3,902,264 to Radig discloses a covered apparatus (Figs. 1-5) having a base (20); an upright tubular frame (12, 14) supported on the base; a seat (26) supported on the base and the upright tubular frame; a hood (16) supported on the upright frame over the seat and that is movable between a hiding position where the hood is located over the

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seat and an open position where the hood is not located over the seat; a latch (94, 100) attached to the upright tubular frame and operably connected to the seat and to a body-supporting member (132) for movement between a latched position that holds the hood in the closed/hiding position when a person is not resting on the body-supporting member, and for automatic movement to a released position when the person places weight on the body-supporting member, the latch further being configured to stay in the released position when the person stands up from the seat and until the latch is reset; biasing springs (102) attached to the hood and biasing the hood toward the open position; and additional springs (90, 98, 130) operably connected to the upright tubular frame to control the opening of the hood. US 3,902,264 to Radig does not expressly disclose a blind further including a cable that extends at least partially through the tubular frame and that operably connects the hood to the latch. Dubinsky teaches a covered apparatus (Figs. 1-3) having a link mechanism (18, 36, 38) including a cable within the hollow internal cavity of an upright tubular frame (20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a link mechanism including a cable within the upright tubular frame of the blind disclosed by US 3,902,264 to Radig, resulting in a covered apparatus requiring minimum operating force to open (Dubinsky: col. 1, lines 63-65).

Furthermore, it is considered well within the capabilities of one skilled in the art to route cables or portions thereof, as well as portions of a link mechanism within the tubular frame of a blind or covered apparatus, if so desired, or by design choice.

8. Claim 21 is rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig and Dubinsky as applied to claim 18 above, and further in view of Sayles. US 3,902,264 to Radig and Dubinsky disclose a blind having all of the elements stated previously.

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US 3,902,264 to Radig and Dubinsky do not expressly disclose a blind including an additional biasing spring, the springs being individually releasably attached so that the springs can be used singularly or together to bias the hood open at a selected speed. Sayles teaches a blind (Figs. 1-6) having a pair of biasing members (40) individually and releasably attached to a hood (10) that is movable between an open position and a closed position; the biasing members being rubber bands, springs or other resilient members (Sayles: col. 4, lines 4-7). Sayles further teaches that the "size" (i.e. elastic spring constant) of the biasing members are chosen such that weight of the hood can be overcome easily as the hood is moved to the open position (Sayles: col. 3, line 58 to col. 4, line 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the spring arrangement of the blind disclosed by US 3,902,264 to Radig and Dubinsky, by employing individually releasably biasing springs taught by Sayles, thus allowing the hood to be moved to either the closed cover position or the open position quickly (Sayles: col. 2, lines 19-21).

9. Claim 22 is rejected under 35 U.S.C. § 103(a) as being unpatentable over US 3,902,264 to Radig and Clopton. US 3,902,264 to Radig discloses a blind (Figs. 1-5) having a base (20); a frame supported on the base and having a vertical bottom post (12), a vertical top post (30), an offset section (24) connecting the top and bottom posts, one of the top post, the bottom post, and the offset section; a link-and-bias mechanism on the frame including a releasable latch (94, 100) supported by the frame and movable between a holding position and a released position; a hood (16) operably connected to and supported for movement on the top post for movement between a hiding position and an open position; and a seat (26) supported in a balanced position over the vertical bottom post and connected at a rear portion to the vertical top post and connected to the

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releasable latch; a second seat (132) supported in a balanced position on the vertical bottom post including a section pivotally supported on the post, the second seat being movable between an upper position where the link-and-bias mechanism holds the hood in the hiding position and a lowered position where the hood is released for movement to the open position; the latch when in the holding position holding the second seat in the upper position, and the latch when the in the released position releasing the seat for movement from the upper position, but the seat being configured and arranged to hold the hood in the hiding position when the hunter is resting on the seat even when the latch is in the released position (note: a hunter may rest or place their weight on the second seat without causing any actuation of the latch). US 3,902,264 to Radig does not expressly disclose a blind wherein the base includes struts; and wherein the front section of the seat is supported by struts and the rear section is supported by the base. Clopton teaches a blind (Fig. 1) wherein a front portion includes struts (5) to support the blind. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a base with struts, as taught by Clopton, modifying the base and seat disclosed by US 3,902,264 to Radig, thus providing a compact, lightweight, foldable frame that can be easily transported and stored (Clopton: col. 1, lines 66-68).

Response to Arguments

10. Applicant's arguments filed 15 August 2003 have been fully considered but they are not persuasive. Regarding claim 1, Applicant argues that the Haines and the Radig references do not disclose any latch. Haines clearly discloses that the hood is movable from an open and closed

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position via a latch part (22) that is capable of securing the hood in both the open and closed positions. Radig discloses a latch (94, 100) as well. In both cases, the latch part (22) and the latch (94,100) clearly meet the definition provided by the Applicant as “any of various devices in which mating mechanical parts engage to fasten by usually not lock something” (Webster’s Ninth New Collegiate Dictionary, copyright 1991). Applicant further argues that the Haines invention is not movable to an open position where the hood uncovers a seating area. However, claim 1 recites, in part: “a hood operably supported over the seating area *for* movement between a hiding position where the hood is located over the seating area and an open position where the hood is moved to uncover the seating area” (emphasis added). Functional recitation(s) using the words “for” have been given little patentable weight because they fail to add any structural limitations and thereby regarded as intended use language. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In re Casey, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) (“The manner or method in which such machine is to be utilized is not germane to the issue of patentability of the machine itself.”); In re Otto, 136 USPQ 458, 459 (CCPA1963). When interpreting functional language, if the prior art is capable of performing the claimed function-even if not directly disclosed-it anticipates. In re Schreiber, 128 F.3d 1473, 1478, 44 USPQ2d 1429, 1432 (Fed. Cir. 1997). See also MPEP § 2114, 2115. A similar argument is made in regards to the “latch” in claim 18. Further regarding claim 18, Applicant argues that the Radig reference is not configured to stay in the released position when the person stands up from the seat until the latch is reset. Clearly the Radig reference functions in this manner, as pointed out in the rejection above. The Examiner

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holds a similar position and argument for claim 22. Lastly, in specific regards to claim 28, a similar argument is made as in claim 1 above, particularly in regards to the use of functional language, as noted in the rejection above.

Conclusion

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Fitzgerald whose telephone number is (703) 305-4851. The examiner can normally be reached on Monday-Friday from 7:00 AM to 3:30 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai, can be reached on (703) 308-2486. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9306. Any inquiry of a general nature relating

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to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-1113.



JF
11/17/2003

LANNA MAI
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

